

**PT 98-97**

**Tax Type:     PROPERTY TAX**  
**Issue:         Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>AMERICAN LEGION POST 32 and</b>	)		
<b>MEMORIAL HOME CORPORATION</b>	)	<b>Docket #</b>	<b>95-84-85</b>
<b>Applicant</b>	)		
	)	<b>Parcel Index #</b>	<b>14-34-176-009</b>
<b>v.</b>	)		
	)		
<b>THE DEPARTMENT OF REVENUE</b>	)	<b>Barbara S. Rowe</b>	
<b>OF THE STATE OF ILLINOIS</b>	)	<b>Administrative Law Judge</b>	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: David R. Reid, Reid and Jones, for American Legion Post 32 and Memorial Home Corporation.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, 101 W. Jefferson, Springfield, Illinois, on March 20, 1998, to determine whether or not Sangamon County Parcel Index No. 14-34-176-009 qualified for exemption during the 1995 assessment year.

Ronald F. Schermerhorn, Junior Vice Commander; Michael Walton, Judge Advocate; and Ronald Otken, President, in 1995 of the American Legion Memorial Home Corporation, (hereinafter referred to as the "Home") and American Legion Post #32 (hereinafter referred to as the "Post") were present and testified in this matter.

The issues in this matter include, first, whether the home and post were the owners of the parcel during the 1995 assessment year; secondly, whether the home and post are veteran's organizations; and lastly, whether this parcel was used by the home and post for charitable purposes, that were also civic and patriotic, during the 1995 assessment year. Following the

submission of all the evidence and a review of the record, it is determined that the home and post owned this parcel during the entire 1995 assessment year. It is also determined that the post is a veteran's organization and that the home is not. It is also determined that the home holds the property in trust for a veteran's organization. Finally, it is determined that the home and post did not use the property for charitable purposes that were also civic and patriotic during the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Sangamon County Parcel Index No. 14-34-176-009 did not qualify for a property tax exemption for the 1995 assessment year was established by the admission into evidence of Dept.'s Ex. Nos. 1 through 5. (Tr. p. 12)

2. On February 16, 1996, the Department received a property tax exemption application from the Sangamon County Board of Review for Permanent Parcel Index No. 14-34-176-009. The home and post submitted the request and the board recommended that the Department deny the requested exemption for the 1995 assessment year. The Department assigned Docket No. 95-84-85 to the application. (Dept. Grp. Ex. No. 2)

3. On June 13, 1996, the Department denied the requested exemption application finding that the property was not in exempt ownership and use. (Dept. Ex. No. 3)

4. The home and post timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Springfield, Illinois, on March 20, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The street address of the subject property is 505 American Legion Avenue, a/k/a 410 S. 5<sup>th</sup> Street, Springfield, Illinois. (Dept. Ex. No.2 pp. 1)

7. Located on the subject parcel is a two-story 15,000 square foot building. The building contains a barber shop and beauty shop, bar, kitchen, dining room and offices on the first floor, meeting rooms and offices on the second floor. (Dept. Ex. No. 2 p. 1; Applicant's Ex. M; Tr. pp. 66-68)

8. The post acquired the property in 1982 and conveyed the subject parcel to the home by a warranty deed dated September 8, 1995. Prior to the conveyance, the post adopted a resolution regarding the conveyance. The purposes of the conveyance were: to ensure tax exempt treatment under IRC Section 501(c)(2) for the Home Corporation; to terminate the indenture agreement that was in place prior to the conveyance; and to provide for the management of the property through revised bylaws for the respective entities. The conveyance was done pursuant to a suggestion by the Internal Revenue Service. (Dept. Ex. No. 2 pp. 2, 27-32; Tr. pp. 32-33, 62-63)

9. The home was incorporated under the General Not for Profit Act on June 21, 1993. The purpose clause of the articles of Incorporation of the home was amended on July 25, 1995, to state that:

the corporation is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to Springfield Post 32, the American Legion, Department of Illinois, an organization which itself is exempt under IRC Section 501(c)(19), to serve patriotic and civic purposes. (Dept. Ex. No. 2 pp. 33-36)

10. The post was incorporated under the General Not for Profit Corporation Act on June 8, 1929. The object clause states that the post was formed:

to affiliate with the National and State organization of the American Legion; to establish and maintain an organization for the mutual benefit of all returned service men and women; to uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate a one hundred percent Americanism; to preserve the memories and incidents of our association in the Great War; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness. (Applicant's Ex. A)

11. In 1996, the home was registered under the Charitable Trust Act and the Solicitation for Charity Act with the Office of the Attorney General of the State of Illinois. The registration number assigned to the home is CO # 01-029,845. (Dept. Ex. No. 4; Applicant's Ex. B)

12. The post is exempt from federal income tax pursuant to a 501(c)(19) designation granted by the Internal Revenue Service. (Applicant's Ex. J)

13. The American Legion Post 32 Scholarship Trust is exempt from federal income tax pursuant to a 501(c)(3) designation granted by the Internal Revenue Service on November 16, 1994. The post formed the trust to award scholarships to descendants of deceased or current members of the Armed Forces of the United States or affiliated groups. The trust agreement obligated the post to contribute an initial amount of \$100,000.00 to commence the scholarship program. (Applicant's Ex. K & L)

14. The building on the parcel in question is used for meetings of the post and auxiliary, the Navy Club and auxiliary, Voiture 344 and LeFemmes 344, the Springfield Chess Club, and the Springfield Boxing Club, to name a few. The applicant does not charge rent for the meetings held in the building. (Dept. Ex. No. 1 p. 1; Tr. pp. 44-47, 55)

15. Phyllis Spears, tenant, rents the kitchen area of the clubroom and suitable space for storage and office items for \$550.00 per month to run In the Alley restaurant and a catering business. The restaurant employees are covered by the applicant's dram shop insurance while serving beverages from the applicant's bar on the premises. Meals are served on the premises five days a week for lunch and dinner. Often times an organization will serve meals on the weekend as well. (Dept. Ex. No. 2 pp. 3-8; Applicant's Ex. N; Tr. pp. 76-77)

16. Joseph E. Corrigan, tenant, rents rooms 204-206 on the second floor of the building on the subject parcel. The rent is \$740.00 per month. The tenant uses the rooms for an office. (Dept. Ex. No. 2 pp. 15-19; Applicant's Ex. N)

17. Mr. Gene Pankey, tenant, rents rooms 100 and 101 on the first floor of the building on the subject parcel for \$672.00 per month. The area is used as an office, beauty shop, and barbershop. (Dept. Ex. No. 2 pp. 9-14; Applicant's Ex. N)

18. The Police Benevolent and Protective Association unit #5, tenant, rents room 211 on the second floor of the building on the subject parcel for \$300.00 per month. The area is used as an office. (Dept. Ex. No. 2 pp. 20-25; Applicant's Ex. N)

19. The post has bingo license B-02848 granted by the Department. Bingo is held

every Wednesday from 4:00 p.m. to 10:00 p.m. at the Victory Hall located at 730 N. 19<sup>th</sup> Street, Springfield, Illinois. The applicant has a lease to use those premises. For the period August 1, 1994, to July 31, 1995, the gross receipts from bingo were \$210,743.35 and the net proceeds were \$93,743.35. (Applicant's Ex. C)

20. The post has charitable games license No. CP-414 and pull tab license No. P-613, both issued by the Department. For the fiscal year ending September 30, 1995, the post had pull tab income of \$793,579.50 and a net profit of \$61,755.26. The post also had income from special events & activities, including raffles and miscellaneous activities, of \$56,376.99. The net profit realized for the special events & activities for that period was \$20,898.86. (Applicant's Ex. C & J)

21. On February 11<sup>th</sup> and 12<sup>th</sup> the post sponsors the pilgrimage of the American Legion and its auxiliary organizations to the tomb of Abraham Lincoln. (Applicant's Ex. O; Tr. pp. 35-38, 72)

22. In 1997, the post had 1,926 paid members. The post has approximately 1,700 members in 1995. The auxiliary to the post had 233 paid members in 1997. The sons of the American Legion to the post had 205 paid members in 1997. (Applicant's Ex. Q)

23. The post makes donations to many other worthwhile organizations. (Applicant's Ex. R)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory

exemptions from property tax. The provision at issue is found at 35 ILCS 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

In interpreting the above statutory language, the Supreme Court in North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967), held that the predecessor statute to 35 ILCS 200/15-145<sup>1</sup> was constitutional and that the provision granting an exemption to a veteran's organization required the organization's utilization of the property encompass all three of the required uses: civic, patriotic, and charitable. Regarding the constitutionality of the statute, the court said:

It is our view that the legislature, in enumerating the purposes for which property must be used to render it exempt, meant to use the conjunction “and” in its ordinary sense rather than as a disjunctive conjunction which would permit any one of the three stated uses as being sufficient to exempt the property from tax. Therefore, in order for property of veterans’ organizations to be exempted from taxation it must be shown not only that the property was used exclusively for charitable purposes, but also that such use was patriotic and civic. This is not a broader exemption than is permitted by the constitution, rather it is more restrictive, therefore, section 19.18 pertaining to veterans’ organizations is not unconstitutional. *Id.* at 233-234.

In North Shore, the court found that the applicant's usage of the property for its meetings, wedding receptions, and maintaining a bar on the premises necessitated a finding by the court that the primary use of the property was not exempt. The Supreme Court stated:

Plaintiff has not shown, however, that the primary use of the premises was in furtherance of these charitable purposes. The record shows that the premises are used primarily for the following purposes: meetings, both business and social, of the plaintiff and its various auxiliaries; wedding receptions of members of the Post and third parties; dinners and social parties for plaintiff and its auxiliaries; meetings of boy scout troops; meetings of other veterans organizations for a rental donation of \$15; a bar is maintained primarily for members; pool and billiard facilities are maintained for members and their guests; and a five-room apartment is

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<sup>1</sup>. At the time North Shore Post No. 21 v. Korzen was decided, the exemption for veteran’s organizations was found at Ill. Rev. Stat 1963, chap. 120, para. 500.18. The relevant language of the statute is identical to 35 ILCS 200/15-145.

maintained for a caretaker who pays \$40 per month as caretaker. None of these uses are *per se* patriotic and charitable. *Id.* at 235-236. (Emphasis added.)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one whom asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

The home was the owner of the property from September 8, 1995, through the end of 1995. It is disputed that the home is a veteran's organization; however, it is not disputed that the post is a veteran's organization. The language of the purpose clause of the home states that the reason that the home was organized and holds title to the property is for the benefit of the post. The Illinois Courts have held that property will qualify for exemption where it is held in trust for the use and benefit of an exempt organization. *See* People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Also, *see* Community Mental Health Council, Inc. v. Department of Revenue, 186 Ill.App.3d 73 (1989). I therefore find that the property in question is held in trust for a veteran's organization and therefore the ownership of the subject parcel does not defeat the exemption request.

The remaining questions before me are whether the activities of the post on the parcel in question are such as to qualify as charitable, patriotic, and civic. The Supreme Court in North Shore specifically enumerated many of the same activities that this applicant does on the parcel in question as not *per se* charitable and patriotic. In addition, much of the building on the subject parcel is leased. Illinois courts have consistently held that property that is leased does not qualify for a property tax exemption, even if the income is used for exempt purposes. *See* People v. City of Chicago, 323 Ill. 68 (1926), People ex rel. Graff v. Passavant Memorial Hospital, 342 Ill. 193 (1930), People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924) .

The attorney for the home and post also argues that because they are exempt from

payment of federal income taxation and are registered with the Attorney General's Charitable Trust and Solicitations Bureau, that they are entitled to a property tax exemption. The home was registered with the Attorney General's office in 1996, which is not the assessment year at issue. The Illinois courts have addressed the question of whether other exemptions granted by the Department or another governmental entity are decisive. The fact that an organization had been granted a letter of exemption from federal income taxes and is exempt from sales and use taxes is not determinative of the issue of whether the property of an organization claiming exemption from real estate taxes was used exclusively for charitable purposes. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970), Clark v. Marian Park, Inc. 80 Ill.App.3d 1010 (2<sup>nd</sup> Dist. 1980), Decatur Sports Foundation v. Department of Revenue, 177 Ill.App.3d. 696 (4<sup>th</sup> Dist. 1988).

I therefore find that the home and post have not established that the use of the subject property qualifies the parcel for a property tax exemption. There is no dispute that the endeavors of the post are certainly commendable and benefit a great number of people. The court has stated, however, that the use must be exclusively for charitable purposes, which are also patriotic and civic.

It is therefore recommended that Sangamon County Parcel Index No. 14-34-176-009 remain on the tax rolls for 1995.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
November 30, 1998